

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

TIMOTHY OLIVER, #232660

PLAINTIFF

v.

CIVIL ACTION NO. 1:04cv499LGJMR

**CAPTAIN RICK GASTON, OFFICER
PARTAIN AND OFFICER CRAFT**

DEFENDANTS

**RESPONSE IN OPPOSITION TO
PLAINTIFF'S MOTION TO AMEND THE COMPLAINT**

_____ COMES NOW, the Defendant, Captain Rick Gaston, in his Official and Individual Capacities, by and through his attorneys of record, Dukes, Dukes, Keating & Faneca, P.A., and files this his Response in Opposition to Plaintiff's Motion to Amend the Complaint, as follows, to-wit:

I.

Plaintiff has filed a Motion seeking leave of Court to amend the Complaint to name additional Defendants. Defendant opposes this Motion as untimely and respectfully asks this Honorable Court deny Plaintiff's Motion.

II.

Specifically, on August 13, 2004, this Court entered a Scheduling Order in this case setting a discovery deadline of November 8, 2004, and a deadline for filing dispositive motions of December 7, 2004. The deadline for filing dispositive motions was subsequently extended to January 21, 2005, by Order of the Court [DN 19]. Thus, the discovery and dispositive motion deadlines in this case have long since passed.

III.

Defendant filed his Motion for Summary Judgment and supporting Memorandum on January 18, 2005 [DN 20-21]. Plaintiff requested and was given an extension of time until June 1, 2005, in which to file a Response to the Motion for Summary Judgment. Plaintiff filed his Response to Defendant's Motion on June 2, 2005 [DN 25], and that Motion now remains pending before the Court.

IV.

Discovery in this case has concluded and there is a dispositive motion pending. Any deadline for filing amendments to the pleadings has long since passed and Plaintiff's Motion for Leave to Amend the Complaint should be denied as untimely, particularly since it appears to be nothing more than an attempt to add new Defendants in an effort to avoid summary judgment.

WHEREFORE, PREMISES CONSIDERED, Defendant, Captain Rick Gaston, in his Official and Individual Capacities, files this his Response in Opposition to Plaintiff's Motion to Amend Complaint, and respectfully requests that this Honorable Court deny Plaintiff's Motion. Defendant prays for such other and further relief as this Honorable Court deems appropriate.

RESPECTFULLY SUBMITTED, this 24th day of April, 2006.

**CAPTAIN RICK GASTON, IN HIS OFFICIAL AND
INDIVIDUAL CAPACITIES, DEFENDANT**

BY: **DUKES, DUKES, KEATING & FANEC A, P.A.**

BY: /s/ Cy Faneca
CY FANEC A, MSB #5128
SUL OZERDEN, MSB #99220

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CERTIFICATE OF SERVICE

I, CY FANeca, do hereby certify that I have this day delivered, via United States Mail, postage fully pre-paid, a true and correct copy of the above and foregoing pleading to the following:

Timothy Oliver, #232660
Limestone Infirmary
28779 Nick Davis Road
Harvest, AL 35749

This, the 24th day of April, 2006.

/s/ Cy Faneca
CY FANeca